

JONES DAY

51 LOUISIANA AVENUE, N.W.
WASHINGTON, D.C. 20001-2113
TELEPHONE: (202) 879-3939 • FACSIMILE: (202) 626-1700

Direct Number: (202) 879-3734
rcook@jonesday.com

177138
080024-024270

December 4, 2003

VIA HAND DELIVERY

The Honorable Patti B. Saris
United States District Court
District of Massachusetts
One Courthouse Way, Suite 2300
Boston, Massachusetts 02210

Re: *In Re: Pharmaceutical Industry Average Wholesale Price Litigation*,
MDL No. 1456, Civil Action No. 1:01-CV-12257-PBS

Dear Judge Saris:

In accordance with Case Management Order No. 9 ("CMO 9"), entered on November 17, 2003, I write to advise the Court of a related state court case and to ask the Court to contact the state court judge before he considers the question of coordination at a hearing on December 11, 2003. Please take notice of the following pending state court action that "allege[s] fraud or related violations of law in connection with the pricing of Medicare or Medicaid reimbursed prescription drugs" against Abbott Laboratories, Abbott Laboratories, Inc., and others:

The State of West Virginia ex rel. Darrell V. McGraw, Jr., Attorney General v. Warrick Pharmaceuticals Corporation, Schering-Plough Corporation, Dey, Inc., Abbott Laboratories, and Abbott Laboratories, Inc., Civil Action No. 01 C 3011, Circuit Court of Kanawha County, West Virginia, Judge James C. Stucky; (304) 357-0364.

In this action, no discovery has taken place yet as the parties are awaiting the entry of a protective order. The State of West Virginia has filed a motion for the entry of a protective order and has advised defendants that it opposes coordinated discovery. Abbott is filing a motion to coordinate discovery and a response to the State's protective order motion. Abbott is asking the West Virginia court to enter a coordinated discovery order as outlined in CMO 9, to deny the State of West Virginia's motion for a protective order, and to adopt the protective order entered in MDL 1456.

Although this action and all other related state court actions will be included in a comprehensive list that defendants in MDL 1456 will submit to the Court, Abbott has brought this action to the Court's immediate attention because the West Virginia court is likely to rule soon on the issue of coordination. The State of West Virginia's protective order motion, and

NYI-2099626v3

ATLANTA • BEIJING • BRUSSELS • CHICAGO • CLEVELAND • COLUMBUS • DALLAS • FRANKFURT • HONG KONG • HOUSTON
IRVINE • LONDON • LOS ANGELES • MADRID • MENLO PARK • MILAN • MUMBAI • MUNICH • NEW DELHI • NEW YORK
PARIS • PITTSBURGH • SAN FRANCISCO • SHANGHAI • SINGAPORE • SYDNEY • TAIPEI • TOKYO • WASHINGTON

JONES DAY

The Honorable Patti B. Saris
December 4, 2003
Page 2

presumably Abbott's motion to coordinate discovery, are scheduled to be heard by Judge James C. Stucky at 8:30 a.m. on December 11, 2003.

The contact information for Judge Stucky is as follows:

Honorable James C. Stucky
Kanawha County Courthouse
111 Court Street
Charleston, West Virginia 25328
Phone: 304 357-0364

Sincerely,

A handwritten signature in cursive script that reads "Chris Cook" followed by a stylized "JPC" monogram.

R. Christopher Cook

cc: All Counsel of Record In Re: Pharmaceutical Industry Average Wholesale Price
Litigation, MDL No. 1456, Civil Action No. 1:01-CV-12257-PBS (via Verilaw)
The Honorable James C. Stucky
Marlene F. Gibbons, Esq. (via facsimile)
Sean P. McGinley, Esq. (via facsimile)
Carte P. Goodwin, Esq. (via facsimile)
Richard Neely, Esq. (via facsimile)
John Tinney, Esq. (via facsimile)